

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED
U.S. DISTRICT COURT

2011 NOV 28 A 10:26

VEAR LEROY BROOKS,

Plaintiff,

vs.

DR. RICHARD GARDEN et al.,

Defendants

MEMORANDUM DECISION

AND ORDER

BY:

Case No. 2:11-CV-1032-DS

District Judge David Sam

Plaintiff, Vear LeRoy Brooks, an inmate at Utah State Prison, filed a civil rights complaint against Utah State Prison medical staff defendants. As discussed below, the Court concludes that Brooks must pay the filing fee before this case can proceed.

The *in forma pauperis* statute authorizes a court to let an indigent prisoner file a complaint in federal court without prepaying the filing fee. But, it also restricts those who have repeatedly filed complaints that are frivolous or fail to state a valid claim. The relevant portion of the statute provides:

In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

“These fee provisions are intended ‘to reduce frivolous prisoner litigation by making all prisoners seeking to bring lawsuits or appeals feel the deterrent effect created by liability for filing fees.’”¹

¹28 U.S.C.S. § 1915(a) (2011).

²*Id.* § 1915 (g).

³*Cosby v. Meadors*, 351 F.3d 1324, 1327 (10th Cir. 2003) (quoting *In re Smith*, 114 F.3d 1247, 1249 (D.C.Cir. 1997)).

Brooks has filed three complaints in the United States District Court for the District of Utah that were dismissed as frivolous or failing to state a claim upon which relief may be granted.⁴

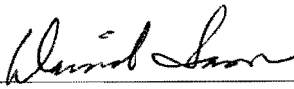
Section 1915(g) applies here because (1) Brooks was a prisoner when he filed this complaint; and (2) he has filed three or more prior cases in federal court that have been dismissed as failing to state a claim or frivolous. The language of section 1915(g) is mandatory. Thus, a federal prisoner who falls within the three-strikes provision is required to prepay the entire filing fee before his claims may proceed further.

ORDER

Because he has filed three or more cases in federal court which have been dismissed as failing to state a claim or frivolous, Brooks is not eligible to proceed further without prepaying the filing fee in this case. Therefore, Brooks is **DENIED** leave to proceed without prepayment of fees. He is **ORDERED** to pay the entire \$350 statutory filing fee within thirty days from the date of this order. Failure to do so will result in the dismissal of the complaint.

22nd November, 2011.

BY THE COURT:



DAVID SAM
United States District Judge

⁴See *Brooks v. Clerk*, No. 2:10-CV-1 TC (D. Utah Apr. 28, 2011) (dismissing complaint for failure to state claim upon which relief may be granted); *Brooks v. Frederick*, No. 2:01-CV-833 DS (D. Utah June 12, 2002) (same); *Brooks v. Frederick*, No. 2:97-CV-647 DB (D. Utah Nov. 10, 1997) (same).